

## **CONFIDENTIALITY INFORMATION SHEET**

This sheet includes information on the following issues relating to confidentiality:

- I.** Laws and rules regarding confidentiality
- II.** When to claim confidentiality
- III.** How to claim confidentiality
- IV.** IDEM's determination on your claim.

### **I. Laws and rules regarding confidentiality**

Generally all documents submitted to a government agency are public records and available for viewing by anyone. An exception to the rule language on public records (327 IAC 12.1) is the option for those regulated by IDEM to claim that their application materials or records are confidential and not subject to public viewing per 327 IAC 12.1-3-1(b). The basis for the claim of confidentiality is that the material or records can be deemed to be a "trade secret" as defined in IC 24-2-3-2(2)(C). The definition is printed below for your reference:

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. As added by Acts 1982, P.L.148, SEC.1. Amended by P.L.8-1993, SEC.343.

### **II. When to use claim confidentiality**

There are two instances where a producer may want to exercise a claim for confidentiality: 1) at the time of application for a Confined Feeding Approval and 2) during the acquisition of operating records by an IDEM inspector per 327 IAC 12.1-4-1(b).

### **III. How to claim confidentiality**

In order to claim confidentiality, a very specific process must be followed per 327 IAC 12.1-4-1(a). For all application materials, a claim of confidentiality can be made by using the "Application Confidentiality Claim" form. Segregate the items you wish to claim as confidential and attach the Application Confidentiality Claim form to the front of these items. Additionally, each item must be clearly labeled as confidential. In addition to proper labeling, the request must contain supporting information to show that these materials are entitled to confidential treatment. The supporting information must meet the criteria as established in 327 IAC 12.1-4-1(d) which is printed below:

(d) The person submitting the claim shall provide supporting information to show the information claimed as confidential is entitled to confidential treatment under IC 5-14-3, including the following:

- (1) State that the information is a specific type of confidential information under IC 5-14-3-4(a) and IC 13-14-11-3(a)(1) or IC 5-14-3-4(b) and IC 13-14-11-3(a)(2). If the information is confidential under IC 5-14-3-4(a)(4), the person submitting the claim shall provide a narrative statement or documents supporting the claim that the information meets the necessary elements of a trade secret as defined at IC 24-2-3-2.

- (2) State whether the information has previously been determined to be confidential by the commissioner.
- (3) Indicate the portion of the supporting information claimed as confidential as specified in subsection (c). (Full citation is 327 IAC 12.1-4-1(c)).
- (4) Specify the period of time for which confidentiality is requested if the period is to be other than seventy-five (75) years as provided in IC 5-14-3-4(e).
- (5) Whenever the claim is based on the commissioner's discretionary power to grant confidential status to information under IC 5-14-3-4(b) and IC 13-14-11-3(a)(2), state all of the following:
  - (A) The statute, rule, permit, or other authority that requires the submission of such information.
  - (B) Facts demonstrating that the information may be treated as confidential under IC 5-14-3-4(b).

For claiming confidentiality on materials that IDEM is acquiring from your operating record for enforcement or other purposes, use the "Inspection Confidentiality Claim" form which is available from inspectors. At the time of the inspection, list all the documents which you feel are confidential in the middle section. The basis for claiming confidentiality is to be listed in the lower section of this form and can be done either at the time of the inspection or up to five days after the inspection. Since the form is in triplicate, one sheet can be provided to the inspector, a second sheet can be mailed in within 5 days by the owner/operator, and a third sheet can be retained by the owner/operator.

#### **IV. IDEM's Determination on Confidentiality**

Once your request has been properly made to IDEM, the agency will make a determination on whether it qualifies for confidentiality or not. Per 327 IAC 12.1-6-2, the agency may request additional information before making the final decision of approval or denial of the request. The submitted or acquired material will be treated as confidential until a final decision has been made. In accordance with IC 4-21.5, as with any other agency decision, a determination on confidentiality is appealable.